

**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**  
**Office of Conservation and Coastal Lands**  
**Honolulu, Hawaii**

**Board of Land and Natural Resources**  
**Department of Land and Natural Resources**  
**State of Hawaii**  
**Honolulu, Hawaii**

FILE NO.: Cдуа OA-3301  
REF: OCCL: MC  
Acceptance Date: March 13, 2006  
180 Exp. Date: September 09, 2006

June 9, 2006

**REGARDING:** Legalizing a CRM wall and encroachment

**APPLICANT:** LQTCP, Limited Partnership  
Tita C. Pang, General Partner of the applicant  
Trustee, Tita C. Pang Trust  
c/o 1099 Alakea Street, 14<sup>th</sup> Floor  
Honolulu HI 96813

**AGENT:** Galen C.K. Leong  
1099 Alakea Street, 14<sup>th</sup> Floor  
Honolulu HI 96813

**LANDOWNER:** LQTCP L.P.

**LOCATION:** 47-115 Kamehameha Highway, Kāne'ohe HI 96744  
Kahalu'u, Ko'olaupoko, O'ahu

**TMK:** (1) 4-7-019:073

**AREA OF USE:** 1106 square feet

**SUBZONE:** Resource [Submerged / Shoreline]

**DESCRIPTION OF AREA:**

The project area is in Kahalu'u along Kāne'ohe Bay. The subject parcel, TMK (1) 4-7-019:073, is 4,884 square feet and faces to the northwest. The parcel itself is not in the State Land Use Conservation District. **Exhibit 1: Pang Encroachment** shows the location of the parcel.

The area is a residential neighborhood bounded by Kāneʻohe Bay on the north and undeveloped Conservation District lands on the south. The shoreline in the neighborhood has been heavily modified, and is dominated by CRM walls, in-fills, and piers. **Exhibit 2: Shoreline** shows the shoreline as seen from the wooden pier.

There are no surface archaeological features at the project site.

### **PROPOSED USE:**

The applicant is seeking to legalize an area off the subject parcel known as Easement E-9. A rock wall bounds the encroachment on the makai sides. The total square footage, including the rock wall, is 1106 square feet. The rock wall and filled area were constructed at an unspecified date, and were therefore deemed to be unauthorized. The encroachment was subsequently filled with soil to render its surface even with the subject parcel. **Exhibit 3: Easement Plan** is a professional survey showing the location of the easement on the parcel. **Exhibit 4: Easement E-9** shows the in-filled area and CRM wall, as well as an existing wooden pier.

The applicant needs to legalize the encroachment in order to obtain a certified shoreline map and to participate in the Kāneʻohe Bay Pier Amnesty Program. The parcel was previously subject to an Administrative Penalty [HOAPS Case 04-0035-CCL-HA], which has since been resolved.

This Conservation District Use Permit will resolve two OCCL enforcement cases on the parcel: OA-05-67 for the wall and fill, and OA-04-35 for the shoreline encroachment.

No new construction or change in land use is proposed with this application.

Given that the subject encroachment and rock wall are approximately forty years old, and given that the surrounding shoreline has been heavily modified, OCCL believes that the encroachment resulted in minor alteration in the conditions of the land and water.

### **SUMMARY OF COMMENTS:**

The OCCL consulted the following persons and agencies:

Department of Health - Office of Environmental Quality Control; Office of Hawaiian Affairs; Kāneʻohe Bay Regional Council; Department of Land and Natural Resources (DLNR) - Division of Boating and Ocean Recreation, Land Division; Department of Business, Economic Development, and Tourism (DBEDT) - Office of Planning, Coastal Zone Management, Land Use Commission.

A notice of the Conservation District Use Application (CDUA) was published in the April 8, 2006 edition of the Office of Environmental Quality Control's *Environmental Notice*.

The following comments were received:

DLNR Division of Boating and Ocean Recreation

No comments.

DLNR Land Division

Land Division notes that "a wall and landscaping easement will be required from the Land Division to resolve the encroachment."

DBEDT Land Use Commission

The Land Use Commission notes that the applicant should obtain a certified shoreline map in order to legalize the CRM wall and encroachment area. Upon completion of a certified shoreline map the Land Use Commission will be able to perform a boundary interpretation to determine the exact location of the Conservation District boundary relative to Easement E-9.

Office of Hawaiian Affairs

The Office of Hawaiian Affairs (OHA) notes that the encroachment has been in place since the 1960's, that Kāne'ohe Bay's geography and hydrology do not lend themselves to public beach use, and that the shoreline has been extensively altered with similar construction elements. As no new construction is proposed, OHA does not have any comments on the CDUA.

**ANALYSIS:**

On March 17 2006 the Department of Land and Natural Resources gave approval as landowner for processing the CDUA, with the Chair of the Department signing as landowner. This did not constitute an endorsement of the project.

Following review and acceptance for processing, the applicant was notified, by letter dated March 17, 2006 that:

1. The proposed use was an identified use within the Conservation District according to Hawaii Administrative Rules (HAR), §13-5-25 *Identified land uses in the protective subzone*, R-6 *Marine Construction*, (D-1). This use requires a permit from the Board of Land and Natural Resources [BLNR]. The final decision as to whether to grant or deny the permit lies with the BLNR.
2. A public hearing pursuant to HAR §13-5-40 was not required

3. This project was exempt from conducting an Environmental Assessment pursuant to HAR §11-200-8 *Exempt Classes of Action, 6: Construction and location of single, new, small facilities or structures.*

### SECTION 13-5-30 CRITERIA:

The following discussion evaluates the merits of the proposed land use by applying the criteria established in Section 13-5-30, Hawaii Administrative Rules (HAR).

1. *The proposed use is consistent with the purpose of the Conservation District.*

The objective of the Conservation District is to conserve, protect and preserve the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety, and welfare.

Staff is of the opinion that the proposed action will not negatively impact the natural resources of the area.

2. *The proposed land use is consistent with the objectives of the Subzone of the land on which the use will occur.*

Pursuant to HAR §13-5-14, the objective of the Resource Subzone is to designate open space where specific conservation uses may not be defined, but where urban use may be premature.

Land Division has stated that pier development in Kāneʻohe Bay is a good use of the environment given the environmental and social fabric of the area.

3. *The proposed land use complies with the provisions and guidelines contained in Chapter 205A, HRS entitled "Coastal Zone Management", where applicable.*

Staff notes that the proposed project is consistent with Chapter 205A.

4. *The proposed land use will not cause substantial adverse impact to existing natural resources within the surrounding area, community or region.*

The neighboring shoreline has been extensively modified with in-fill and CRM walls. Staff is of the opinion that the project will have little to no impact on the existing natural resources of the area.

5. *The proposed land use, including buildings, structures and facilities, shall be compatible with the locality and surrounding areas, appropriate to the physical conditions and capabilities of the specific parcel or parcels.*

The Pang encroachment and CRM wall are similar in size and design to others in the neighborhood. The proposed use is thus a visually and functionally appropriate use for the subject parcel.

6. *The existing physical and environmental aspects of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, whichever is applicable.*

This encroachment and CRM wall will not impact public access, nor further impact natural beach processes. Removing the wall and encroachment will increase erosion on both the subject and neighboring parcels, and increase erosion of sediments into the Bay.

7. *Subdivision of land will not be utilized to increase the intensity of land uses in the Conservation District.*

The proposed project does not involve subdivision of Conservation District land.

8. *The proposed land use will not be materially detrimental to the public health, safety and welfare.*

The proposed action will not be materially detrimental to the public health, safety and welfare.

## DISCUSSION:

The proposed use is an identified use within the Conservation District according to the Hawai'i Administrative Rules (HAR) §13-5-25, R-6 MARINE CONSTRUCTION.

As stated previously, the Kāne'ohe Bay shoreline has been extensively altered. The encroachment, in-fill, and CRM wall are similar in design, size, and construction with other projects in the neighborhood.

While the exact date of the encroachment is unknown, OCCL staff is of the opinion that the structure is a number of years old, and is thus not targeted by the Department's zero-tolerance policy on recent encroachments. Any impacts on the local environment and shoreline processes are likely to have already occurred. Removing the wall and encroachment could potentially have a negative effect by increasing sedimentation runoff and erosion.

The Kāne'ohe Bay area is suited for boating and fishing as the bay bottom is silty and rocky and there is no sandy beach. Within the immediate area of the subject parcel there is no public access to the shoreline except by boat. OCCL does not believe that shoreline access and recreational activities will be affected by granting this permit.

Staff therefore recommends;

**RECOMMENDATION:**

Based on the proceeding analysis, staff recommends that the Board of Land and Natural Resources APPROVE this application for an after the fact permit for Easement E-9 and the CRM wall, subject to the following conditions:

- 1) The applicant shall comply with all applicable statutes, ordinances, rules, regulations, and conditions of the Federal, State and County governments;
- 2) The applicant, its successors and assigns, shall indemnify and hold the State of Hawai'i harmless from and against any loss, liability, claim or demand for property damage, personal injury or death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
- 3) The applicant shall comply with all applicable Department of Health administrative rules. Particular attention should be paid to Hawai'i Administrative Rules (HAR) Section 11-60.1-33, "Fugitive Dust" and to Chapter 11-46, "Community Noise Control;"
- 4) In issuing this permit, the Department has relied on the information and data that the applicant has provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
- 5) The applicant understands and agrees that this permit does not convey any vested rights or exclusive privilege;
- 6) Where any polluted run-off, interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the polluted run-off, interference, nuisance, harm, or hazard;
- 7) The applicant acknowledges that the approved work shall not hamper, impede or otherwise limit the exercise of traditional, customary or religious practices in the immediate area, to the extent such practices are provided for by the Constitution of the State of Hawai'i, and by Hawai'i statutory and case law;
- 8) The applicant shall provide documentation (e.g., book and page, or document number) that the permit approval has been placed in recordable form as a part of a deed instrument;

- 9) Other terms and conditions as may be prescribed by the Board; and
- 10) Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void.

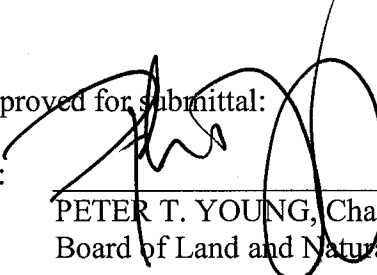
Respectfully submitted,



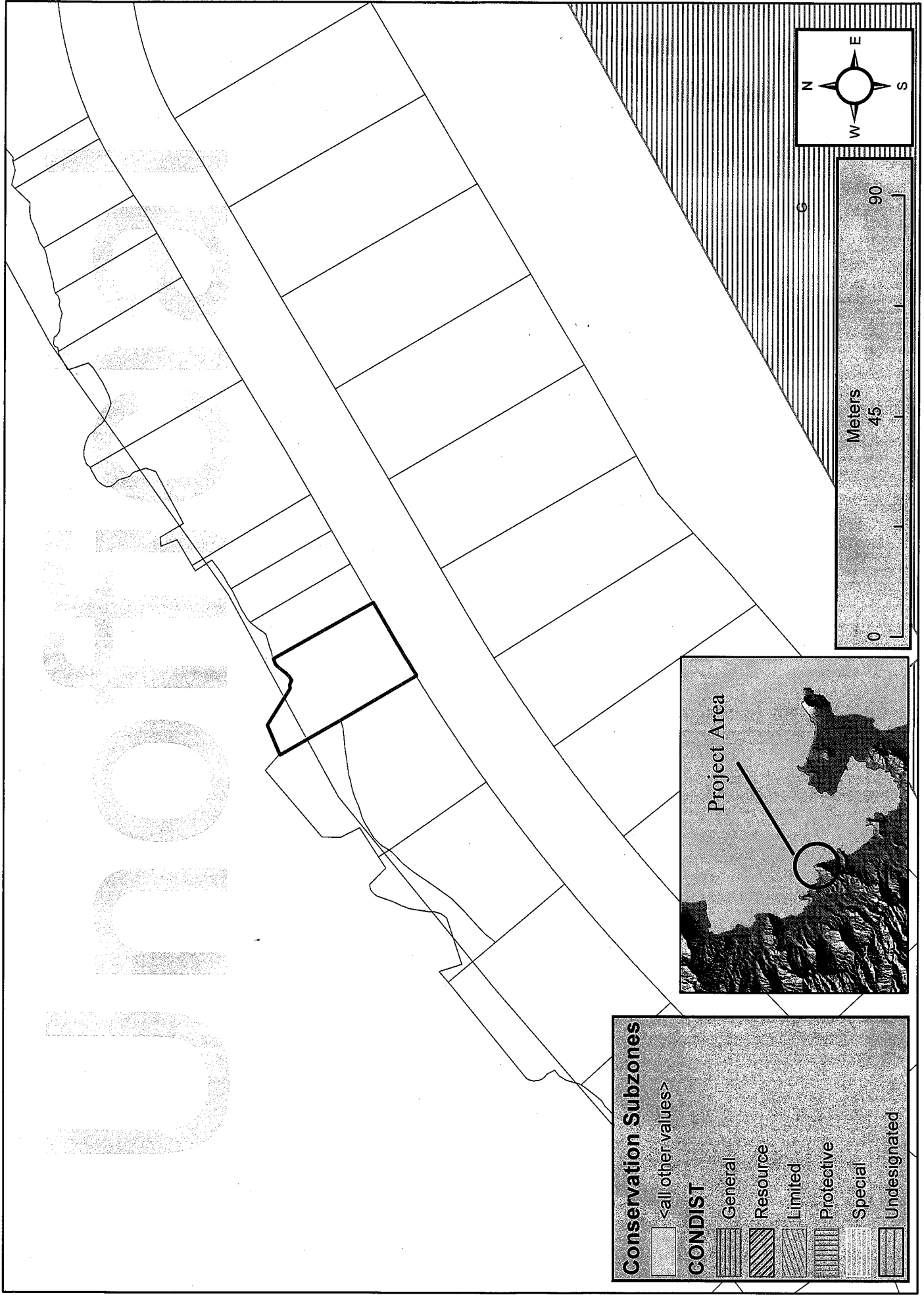
Michael Cain  
Staff Planner

Approved for submittal:

By:



PETER T. YOUNG, Chairperson  
Board of Land and Natural Resources





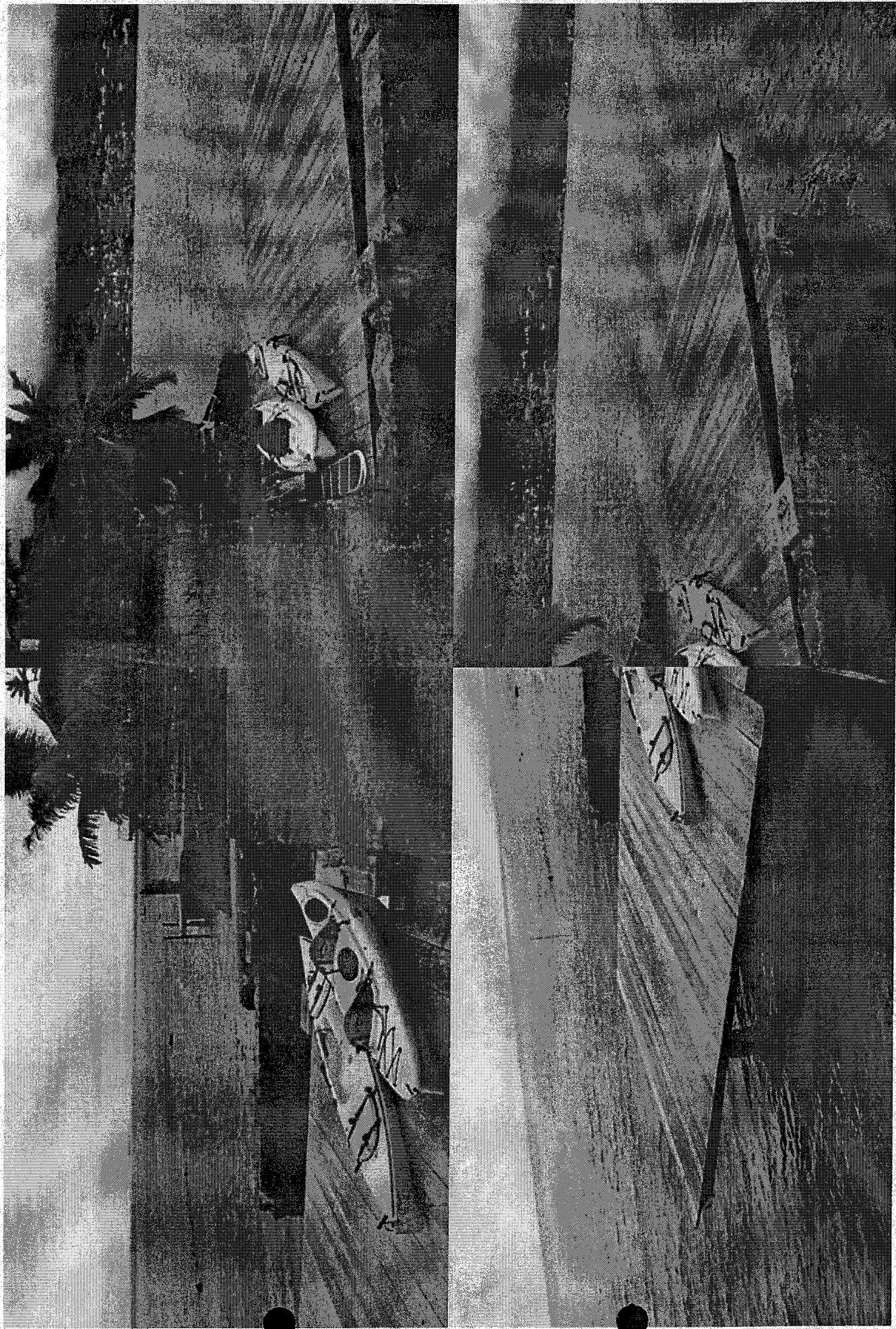
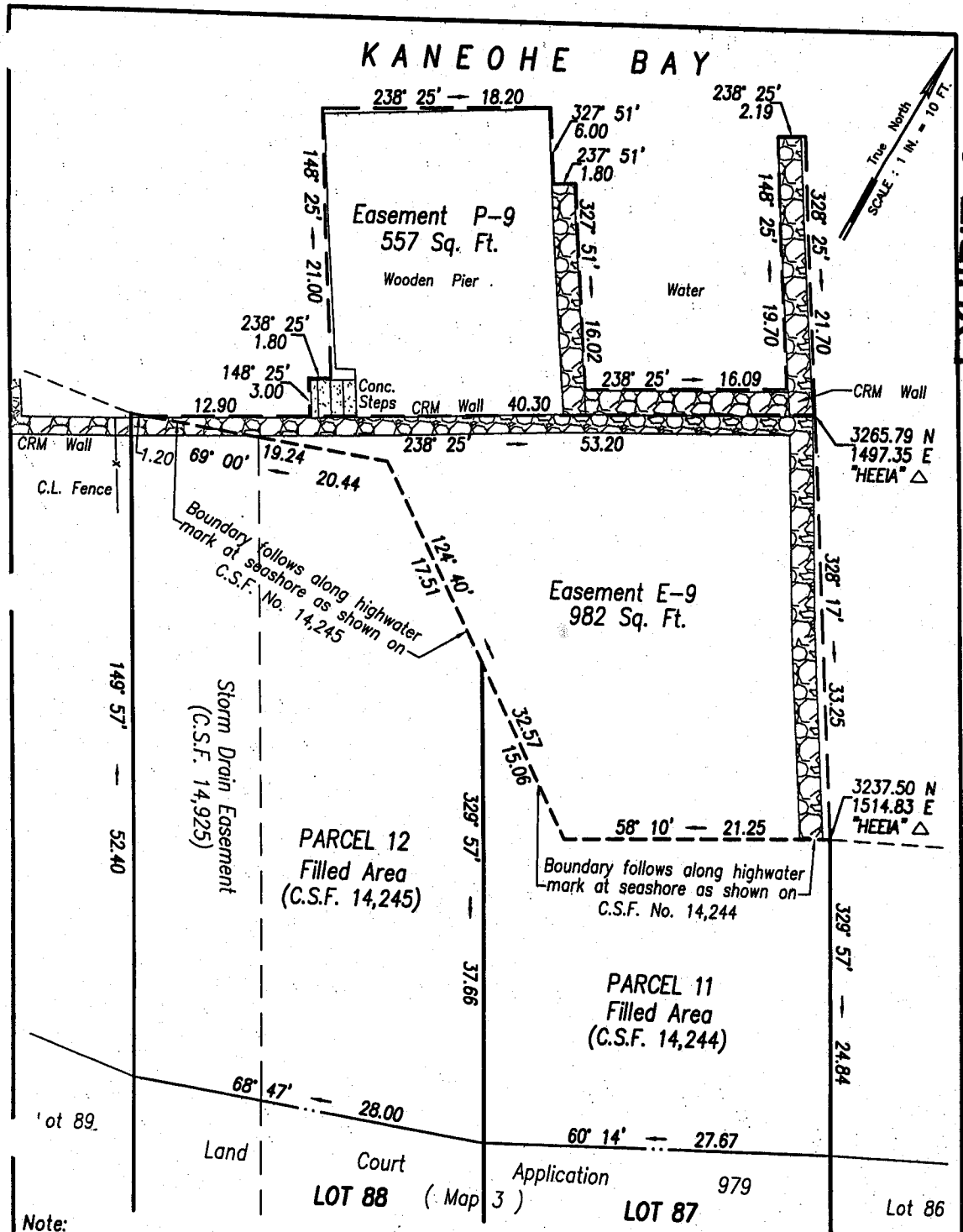
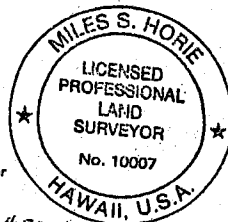


EXHIBIT 2



Note:  
Coordinates and Azimuths referred to "Heeia" Δ



This work was prepared by me or under my direct supervision.

*Miles S. Horie* Exp. 4-30-06  
Miles S. Horie Exp. 4-30-06  
Licensed Professional Land Surveyor  
Certificate Number 10007

**Plan Showing**  
**Pier Easement P-9 and Easement E-9**  
**Fronting Filled Area of Kaneohe Bay**  
**(C.S.F. 14,244 and 14,245)**  
**Fronting Lots 87 and 88, (Map 4)**  
**of Land Court Application 979**  
**at Kahaluu, Koolaupoko, Oahu, Hawaii**  
**T.M.K. : (1)4-7-19 : parcel 73**  
**Scale: 1 inch = 10 feet**  
**Owner: LQTCP, Limited Partnership**

Honolulu, Hawaii

FB 1325

52-54.9

**ENGINEERS SURVEYORS HAWAII, INC.**  
**CIVIL ENGINEERS ~ LAND SURVEYORS ~ CONSTRUCTION MANAGERS**

900 Halekauwila Street  
 June 21, 2002  
 May 19, 2004



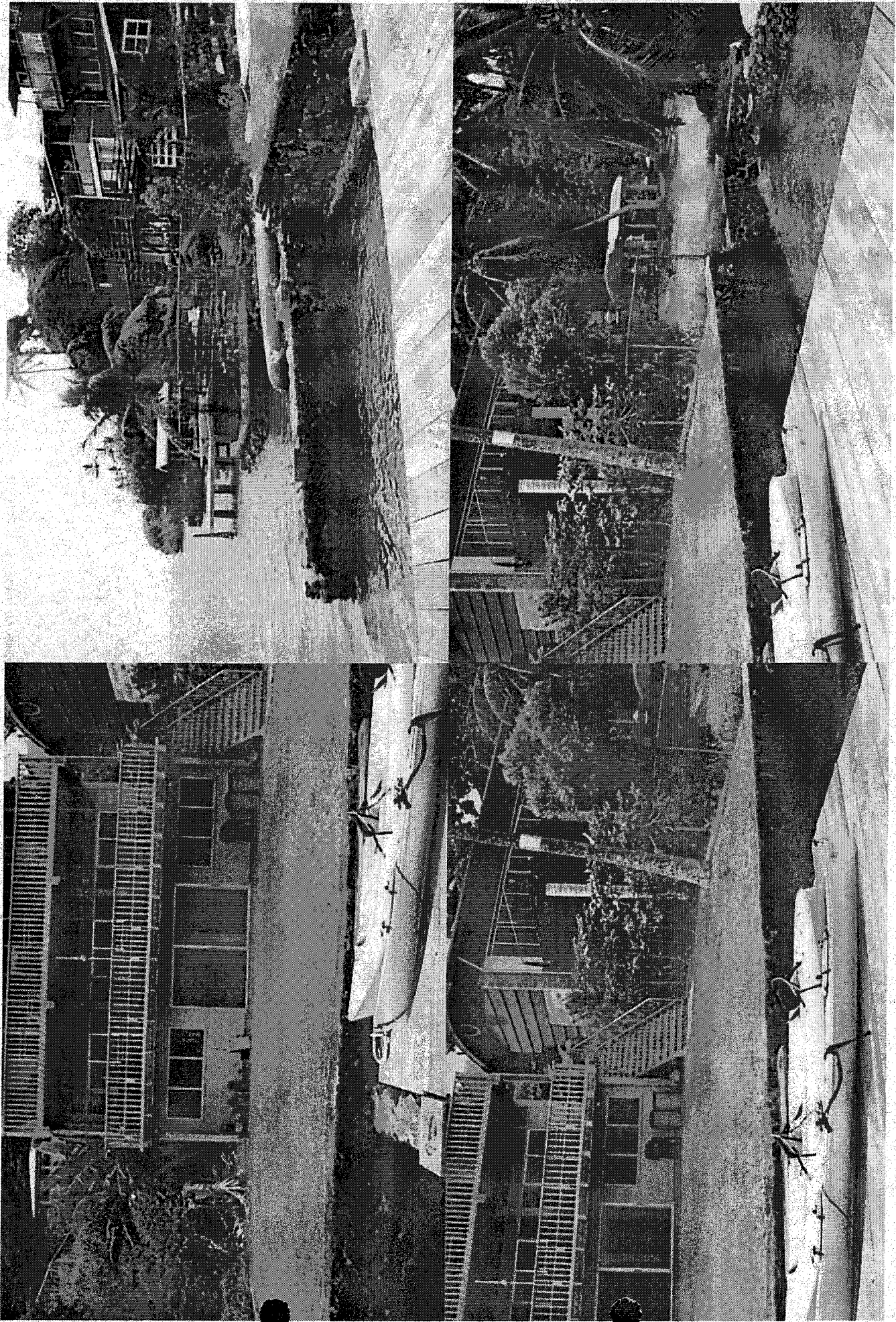


EXHIBIT 4